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October 31, 2000

Honorable John N. Scott, MAI  
Alameda County Assessor  
1221 Oak Street  
Oakland, CA 94612-4288

Attn: Mr. Henri Phelan

Dear Mr. Phelan:

This is in response to your August 21, 2000 facsimile to Ms. Kristine Cazadd wherein you sought answers to the following questions:

1. Parents want to sell their original residence and buy their children's home as their replacement residence and transfer their base year value to that residence. They will be living with their children. Sometime in the future they plan to transfer title back to the children.
  - A. They want to know how "little" they can purchase for and still qualify for Proposition 60 base year value transfer?
  - B. They want to know how long they have to wait before they transfer title back to the children?

As hereinafter explained, in our view, parents could purchase their children's home as their replacement residence for "substantial consideration", albeit consideration less than full cash value but certainly more than "nominal value", occupy it as their principal place of residence, and qualify for Proposition 60 base year value transfer, assuming that all the other requirements of Revenue and Taxation Code section 69.5 for the exclusion are met. That purchase could be followed by the transfer of the residence to the children at some later point in time and qualify for the Proposition 58 parent-child exclusion, assuming that all the other requirements of Revenue and Taxation Code section 63.1 for that exclusion are met. However, such would be dependant upon the parents' good faith efforts to meet the terms and conditions of the exclusions, and such efforts would also be questions of fact to be determined by your office on a case-by-case basis, considering all available evidence.

As you are aware, Proposition 60 is implemented by Revenue and Taxation Code section 69.5 which provides, in part, that any person over the age of 55 who resides in property which is

eligible for the homeowners' exemption may transfer the base year value of that original property to any replacement dwelling of equal or lesser value which is "purchased" or newly constructed by that person as his or her principal residence within two years of the sale of the original property. (Section 69.5(a)(1).)

Section 69.5(b)(4) requires that at the time of claiming the relief provided by subdivision (a), the claimant must be the owner of a replacement dwelling and must occupy it as his principal place of residence, and subdivision (b)(5) requires that the original property of the claimant be sold by him or her within two years of the purchase or new construction of the replacement dwelling. Section 69.5(g)(3) defines "replacement dwelling" as a building, etc., constituting a place of abode which is owned and occupied by a claimant as his or her principal residence and any land owned by the claimant on which the building is situated. Finally, Revenue and Taxation Code section 67 defines the term "purchase" as meaning a change in ownership for consideration.

Based upon the above provisions, we have interpreted section 69.5 as limiting its benefits to replacement dwellings which are purchased or newly constructed. The term "purchase" is defined by section 67 as requiring consideration. And since the definition of "replacement dwelling" includes both the structure and the land on which it is situated, it is clear that the "purchase or new construction" requirement applies both to the structure and the land. This conclusion is expressly supported by section 69.5(b)(5) and (g)(3).

It should be recognized that the term "consideration" as used in section 67 is not limited to the payment of cash. Consideration could include the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, or the creation of a debt. Thus, the consideration which would satisfy the requirements of section 67 can take many different forms.

Further, nothing in section 67 states that the consideration must be equal in value to the value of the property transferred. While a transfer of property for nominal value should be rejected on the theory that the alleged "purchase" is a sham, we have stated that the term "purchase" could include a transfer for substantial consideration even though the amount was less than the full cash value of the property received.

Accordingly, in our view, parents could purchase their children's home as their replacement residence for "substantial consideration", albeit consideration less than full cash value but certainly more than "nominal value", occupy it as their principal place of residence, and qualify for Proposition 60 base year value transfer, assuming that all the other requirements of section 69.5 for the exclusion are met.

As to how "little" consideration is or would be "substantial" consideration, such is a question of fact to be determined by your office on a case-by-case basis, considering all available evidence. In our view, the law contemplates that persons seeking to utilize exclusions from changes in ownership, including this exclusion, make good faith efforts to meet the terms and conditions of the exclusions. In this instance, it would be a good faith effort to purchase the

replacement dwelling if evidenced by payment of full cash value or, alternatively, "substantial" consideration. Thus, we would not advocate dispensation of advice as to how "little" consideration is or would be "substantial" consideration, or, in the same vein, indications of dollar amounts or percentages that would, in a given instance, be considered by your office to be "substantial" considerations.

As to the intent to transfer title to the replacement dwelling back to the children at some later date, the Proposition 60 exclusion and the Proposition 58 exclusion are not mutually exclusive. Thus, the purchase of the children's home as a replacement dwelling could be followed by the transfer of the residence to the children at some later point in time, and both exclusions could be available, assuming that all the requirements of section 69.5 and, later, section 63.1 were met. Again, however, the law contemplates that persons seeking to utilize exclusions make good faith efforts to meet the terms and conditions of the exclusions, in this instance, purchasing the replacement dwelling for use and using it as the principal place of residence. Such would be a question of fact to be determined by your office on a case-by-case basis, considering all available evidence. In our view, good faith would appear to be lacking in an instance in which inquiring about how "little" consideration would be enough consideration and how long persons would have to wait after purchasing a replacement dwelling from their children to transfer title back to the children was followed by a purchase of the replacement dwelling for less than a substantial consideration, a brief stay by the parents in the replacement dwelling, and the parents' transfer of title to the replacement dwelling back to the children. Rather, these circumstances would indicate that the parents' purchase is conditioned upon a promise to resell or retransfer the property back to the children while living in the property. As explained in the attached opinion letter cited as Annotation No. 200.0115, these facts tend to show that the parties do not intend a bona fide purchase, and the transaction should not be recognized.

Again then, we would not advocate dispensation of advice as to how long parents who have purchased their replacement dwelling from their children would have to wait before they transfer title back to the children.

2. Parent wants to sell her original residence to her daughter for \$225,000, it has a market value of \$450,000, and buy a replacement dwelling for \$290,000. Will she qualify for Proposition 60 base year value transfer?

The answer is yes. Again, section 69.5 provides in subdivision (a)(1) that any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption may transfer the base year value of that original property to any replacement dwelling of equal or lesser value which is purchased by that person as his or her principal residence within two years of the sale of the original property. Subdivision (e) provides that upon the sale of the original property, the assessor shall determine a new base year value for that property, and it also provides that the provisions of the section shall not apply unless the transfer of the original property is a change in ownership which subjects that property to a reappraisal at its current fair market value. Subdivision (g)(4) defines the term "original property" as the building or structure constituting a place of abode and any land owned by the claimant on which the building is located. Subdivision (g)(5) defines the term "equal or lesser value" to mean that the amount of the full cash value of the replacement dwelling does not exceed 100% of the full cash value of the original property. Subdivision (g)(7) defines the term "full cash value of the original property" as its new base year

value, determined in accordance with subdivision (e). In short, the "full cash value of the original property" means the new base year value which the assessor would establish for the original property, based on its market value at the time it is sold to a third party.

In this instance, the original property has a full cash value of \$450,000, and the replacement property has a value, presumably a full cash value, of \$290,000. Thus, the "equal or lesser value" requirement of section 69.5(g)(5) would be met, and the full cash value of the original property (section 69.5(g)(7)) would be its new base year value determined in accordance with section 69.5(e).

Although the parent wants to sell the original property to her daughter for \$225,000,<sup>1</sup> which is less than market value, the availability of the section 69.5 exclusion is dependent upon the full cash value of the original property, as indicated above, not the sales price of the original property. You, of course, being familiar with market value, would not rely on the price paid for the original property by the daughter as market value but would determine market value in an instance such as this in the same manner as you always determine market values of real properties. As indicated in the February 11, 1988 Letter to Assessors No. 88/10, Questions and Answers – Propositions 58 and 60, at page 6:

6. Question

When making the "equal or lesser value" test comparison, is a simple comparison of the sales price of the original property and the purchase price/cost of new construction of the replacement dwelling all that is needed?

Answer

No. The comparison must be made using: the full market value of the original property as compared to the full market value of the replacement dwelling as of its date of purchase/completion of new construction. This is important because sales/purchase price is not always the same as market value. The assessor must determine the market value for each property, which may differ from sales price.

Finally in this regard, in addition to section 69.5(e), section 69.5(b) provides in subdivision (5) that the original property of the claimant must be sold by him or her within two years of the purchase or new construction of the replacement dwelling, and section 69.5(g) defines in subdivision (8) a "sale" as "any change in ownership of the original property for consideration". Thus, the original property must be sold and the sale must result in a change in ownership in order to transfer the base year value of the original property.

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<sup>1</sup> We would consider a purchase price of \$225,000 for property that has a full cash value of \$450,000 to be a purchase for substantial consideration.

The sale of the original property for an amount other than full market value would, as indicated above, be a sale of the original property which would result in a change in ownership for purposes of these subdivisions.

The views expressed in this letter are, of course, only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ James K. McManigal, Jr.

James K. McManigal, Jr.  
Tax Counsel IV

Attachment

JKM:lg

Precedent/Transbyv/00/07JKM.doc

cc: Mr. Dick Johnson, MIC:63  
Mr. David Gau, MIC:64  
Mr. Charlie Knudsen, MIC:62  
Ms. Jennifer Willis, MIC:70